

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 369 of 1996

in

SPECIAL CIVIL APPLICATION No 5157 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

HEMANTKUMAR DINKARRAI DESAI

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Appearance:

GOVERNMENT PLEADER for Petitioners  
M/S THAKKAR ASSOC. for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT  
Date of decision: 02/05/96

ORAL JUDGEMENT (Per: Pandit J)

The State has preferred this L.P.A. against the the judgment delivered by the learned single Judge of this Court in Spl.C.A. No.5157 of 1996 decided on 12.1.96.

2. Hemantkumar Dinkarrai Desai has filed Spl.C.A. No. 5157/95 against the order of detention passed on 24.5.95 by the District Magistrate, Valsad under the provisions of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act 1980(hereinafter referred to as the said Act). Said Spl.C.A. was heard by the learned single Judge and he came to the conclusion that the representation made by the detenu to the detaining authority along with a copy of the same with a request to the detaining authority to forward the same to the Central Government , but inspite of the said specific request, said representation was not forwarded and the same has resulted into infringement of his fundamental rights under article 22(5) of the Constitution of India.

3. The learned Assistant Government Pleader for the State vehemently urged before us that admittedly in this case the appellant had engaged a senior advocate. A senior advocate knows the procedure as to whom and where the representation is to be made to the Central Government and therefore, in the circumstances, if the said representation is not directly made to the Central Government, then it is not open for the detenu to contend that there is infringement of his fundamental rights guaranteed under article 22(3) of the Constitution of India. At the out set it may be stated that law cannot make any difference between a detenu who is represented by an advocate or not representrd by an advocate. The detenu is entitled to make his representation to the detaining authority and can even make a request to the detaining authority to take out copies of his representation and forward the same to the other authorities. This has been accepted by the Apex Court in the case of Ahir Shad Khan & anor vs. Hmingliana & ors, AIR 1991 (SC) 1983, wherein the following principles are laid down:

"Where the detenu made a request to the detaining authority that a representation prepared by him may be forwarded to the Central Government as well as the State Government for consideration after taking out copies thereof, it would be a denial of his right to represent to the Central Government if the detaining authority as well as

the State Government refused to accede to his request and omitted to forward his representation to the Central Government for consideration. Refusal to accede to his request would be wholly unreasonable and in total disregard to the right conferred on the detenu by Art.22(5) of the Constitution read with S.11 of the Act and the order of detention would be liable to be quashed."

The court cannot apply different principle to a detenu who is represented by an advocate. The contention which the learned A.G.P. for the State raised before us, was previously raised before the Division Bench of this Court in Special Criminal Applications Noss. 765/93 and 766/93. In those cases also the detenus were represented by an advocate and representations were handed over to the detaining authority with a request to send the same to the Central Government and the failure on the part of the detaining authority to do so, was taken as infringement of fundamental rights of the detenu under Article 22(5) of the Constitution of India. The decision taken by the earlier Division Bench, has considered the contention which is now raised before us by the learned advocate in those proceedings and has negatived the same by making the following observations:

"Merely because the detenu has been assisted by an advocate, that does not absolve the detaining authority from its duty to forward the detenu's representation to all the authorities who have a right to consider the representation, and if found acceptable to accept it, if the detenu or his accredited representative makes a request in that behalf. Here, a specific request in that connection has been made by Mr. Kapadia, the learned counsel in the representation. Once such a request is made, the duty of the detaining authority to forward the representation to the authorities mentioned in the grounds of detention commences, and that duty would not come to an end because the request on behalf of the detenu has come from an advocate, who is supposed to know the provisions of the detention law. If the submission of Mr. Mehta, L.A.P.P. is accepted, that would lead to creating discrimination between a class of detenues who are not represented by Advocate and the other class of detenues who are so represented. Even amongst the class of detenues who are represented to

Advocates, there could be such class, viz. detenues who are represented by junior advocates and those who are represented by senior advocates. Such a classification of detenues would be unwarranted under the constitutional conspectus and the detention jurisprudence. Therefore, without saying much on the point, we would only say that the submission of Mr. Mehta, which is so forcefully made on the ground that in the present case as the detenu has been represented by an advocate and the advocate has made the representation, the detaining authority was absolved from its duty to forward the representation to the Central Government. cannot be accepted. That contention is rejected."

We do not find any reason to take a different view than the view taken by the earlier Division Bench of this Court. Admittedly, in this case, the detenu had given his representation to the detaining authority and in the representation he had stated that along with his representation, one more copy is being supplied to the detaining authority so as to enable it to forward the same to the Central Government immediately and without any undue delay. Inspite of the specific request made to the detaining authority, admittedly, the detaining authority had not forwarded the same to the Central Government. Therefore, in the circumstances the learned single Judge is justified in accepting the said Spl.C.A. The order passed by the learned single is quite legal and proper. In the circumstances, this L.P.A. is dismissed with no order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)